IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (DB) No. 135 of 2017

[Against the Judgment of conviction and order of sentence dated 07.12.2016 passed by the learned Additional Sessions Judge – II, F.T.C. – II, Bokaro in Sessions Trial No. 64 of 2016]

Jainul Ansari @ Md. Jainul Ansari, son of Gayasuddin Ansari, Resident of – Village – Kolbendi, P.S. – Pindrajora, P.O. – Khamarbendi, District – Bokaro.

… … … APPELLANT

Versus

1. The State of Jharkhand
2. xxx (Victim)

……RESPONDENTS

……

For the Appellant : Ms. Supriya Dayal, Advocate
Ms. Shalaka Srivastava, Advocate
For the State : Mr. Sanjay Kumar Srivastava, A.P.P.

……

PRESENT
SRI ANANDA SEN, J.
SRI PRADEEP KUMAR SRIVASTAVA, J.

J U D G M E N T

By Court
30.09.2026

Heard the parties.

2. This criminal appeal is directed against the Judgment of conviction and order of sentence dated 07.12.2016 passed by the learned Additional Sessions Judge – II, F.T.C. – II, Bokaro in Sessions Trial No. 64 of 2016, whereby and whereunder, the appellant having been found guilty of charge under Sections 376(2)(n) and 417 of the Indian Penal Code and has been convicted for the said offences and sentenced to undergo rigorous imprisonment for a period of ten years with a fine of Rs.5,000 under Section 376(2)(n) of the Indian Penal Code and in default of payment of fine, he has been further sentenced to undergo simple imprisonment for a period of six months; he has further been

sentenced to undergo simple imprisonment for a period of one year for the offence under Section 417 of the Indian Penal Code. All the sentences have been directed to run concurrently.

3. Learned counsel for the appellant submits that admittedly victim was aged above 18 years at the time of incident and from her deposition itself, it is clear that she was a consensual party to the relationship. Learned counsel submits that when the girl was above 18 years of age and there was consensus regarding sexual relationship, the trial court should not have convicted the appellant for the offence under Section 376(2)(n) of the Indian Penal Code.

4. Learned counsel representing State submits that the victim girl was a student of Class-IX at the time of incident. Though the doctor had opined that there was no sign of intercourse but the victim girl clearly stated that the appellant had committed wrong with her which is sufficient to convict an accused. Learned APP further submits that on the pretext of marriage, the appellant had developed relationship but ultimately the same was not fructified for which the appellant was responsible and thus the offence under Section 376(2)(n) of the Indian Penal Code is made out and the learned Court below has correctly convicted the appellant.

5. After hearing the parties, I have gone through the records of the case and evaluated the records.

6. The prosecution case is based upon written statements of the informant who stated that on 02.12.2015, at about 10:00 p.m., the appellant had taken her from her house near the river bank where an unknown person was standing with motorcycle. Thereafter, she was taken to his mobile shop situated at Mamakudar where physical relationship was established for 2-3 hours on the pretext of marriage. She stated that this incident continued for one year and thereafter she was left. On the basis of aforesaid written report, the FIR being Siyaljori P.S. Case No. 129/2015 was instituted against the appellant for the offence punishable under Section 376, 342 of the Indian Penal Code.

7. The investigating officer conducted the investigation and filed chargesheet for the offence under Section 376 of the Indian Penal Code and cognizance was taken. Thereafter, the case was committed to the Court of Sessions. After hearing on the point of charge, the charge was framed for the offence under Section 376(2)(n) and 417 of the Indian Penal Code against the appellant. As the appellant pleaded not guilty, he was put on trial.

8. In order to prove the charges against the accused, the prosecution had examined altogether ten witnesses. P.W.1 is Dr. Vibha Singh who had examined the victim whereas P.W.-2 is Siddique Ansari, P.W.-3 is Jalil Ansari, P.W.-4 is Md. Rizaul Ansari, P.W.-5 is Kurshid Alam, P.W.-6 is the victim, P.W.-7 is Jariman Bibi, P.W.-8 is Hariaudh Karmali, P.W.-9 is Mithlesh Kumar Singh and P.W.-10 is Bhola Nath Jha. The prosecution has also examined and tried to prove some documents which has been exhibited before the Trial Court whereas, the appellant has examined D.W.-1 Jamal Ansari as a defence witness.

9. P.W.-1 – Dr. Vibha Singh, who had medically examined the victim, has stated in her evidence that there was no injury found on any parts of body of the victim. She also opined that there was no injury, no stain and no foreign hair found in and around private parts of the victim. She further opined that there was no sign of recent sexual intercourse found nor there was any sign of struggle found. So far as age of the informant is concerned, this witness, on the basis of report of the radiologist as well as X-ray and vaginal swab report, has opined it to be more than 18 years.

P.W.-2 Siddique Ansari is the uncle of the victim. He stated that on the pretext of marriage, this appellant had called the victim and thereafter took her in a motorcycle to his mobile shop and thereafter, she was raped. He further stated that uncle (Fufa) of the appellant came to the mobile shop and drove them out. He further stated that family members of the appellant was called and a proposal of marriage was made but the appellant’s family refused

the same. He further stated that they went before the village Committee of Madhuniya Basti but there also the proposal to marry was turned down.

P.W.-3 Jalil Ansari is father of the victim. He stated that he stays in his poultry shop situated one kilometer away from his village and often comes for offering Namaz, food etc. and returns back there. His wife also stays with him in the shop during night hours. He further stated that on 02.12.2015, after dinner he along with his wife came to the poultry shop. After some time, his younger son Parwez Alam came there and informed that his daughter (victim) was missing. He stated that thereafter his elder son brought her daughter. On query, the victim stated that this appellant had taken her and thereafter she was raped. The uncle of this appellant came to their shop and assaulted the appellant and told the victim to leave the place. This witness further stated that thereafter, Yunus Ansari called his elder son and victim was brought back.

P.W.-4 Md. Riyazul Ansari, who is brother of the victim, stated that he was called near the shop where he found his sister was weeping. She narrated to him that on the pretext of marriage, the appellant brought her there and committed rape upon her.

The other witnesses also stated in the same line.

10. The main witness in the instant case is the victim herself, who has been examined as P.W.-6. She stated that prior to the date of occurrence before Moharram, she met the appellant and became friends. The appellant asked her mobile number. When she disclosed that she does not possess any mobile, the appellant gave his mobile number to her. This appellant further gave a mobile to the victim and they started talking each other. Thereafter, the appellant used to visit her house and used to stay there for hours and made physical relationship. She further stated that after 5-6 months of the occurrence, when she conceived, the appellant gave her some medicine as a result of which, the pregnancy was

terminated. As her mobile malfunctioned, on the next Moharram, the appellant gave her chain, ring and a mobile. This witness further deposed that on 02.12.2015, this appellant came to meet her at 9:00 p.m. and asked her to flee on the pretext of Court marriage as his parents were not agreeable to marriage. Thereafter, he took her to the mobile shop and there he raped her and thereafter he drove her out. The uncle (*Fufa*) of the appellant came there and assaulted the appellant and further directed her to leave. Thereafter, brother of the informant was called and informant was brought to her house by her brother. Thereafter, the family members of the appellant was contacted to solemnize the marriage but they refused the proposal as a result of which, this case was registered.

11. We are not discussing the evidence of other witnesses who deposed in the same line as that of the relative of the victim. Few documents were also exhibited before the trial court. The appellant has examined Jamal Ansari as a defence witness who deposed that the victim was inclined to marry with the appellant. However, on refusal of marriage, this case has been lodged.

12. After closure of the evidence of the prosecution, the statement of the accused was recorded under Section 313 Cr.P.C to which, he denied all the allegations and circumstances. After considering the evidence and arguments of the parties, the Trial Court convicted and sentenced for the offences as mentioned hereinabove.

13. After considering the evidence and upon hearing the parties, we find that upon scientific examination of the victim, the doctor opined that the girl was aged more than 18 years of age. There is no contrary evidence that the girl was below 18 years of age and/or was minor at the time of incident. In view of statement of the doctor, we are of the conclusion that the girl was major. So far the sexual relationship is concerned, we find that the appellant and the victim met more than a year ago in a village fair organized

during the Moharram festival. They came close as mobile phone, chain, ring and other gifts were exchanged and at that time also they had established physical relationship without any complaint. The victim also stated that as her mobile phone was damaged, the appellant again gave her mobile phone and they were in regular contact. She also stated that earlier also she had developed physical relationship. Though the physical relationship at that instance has been termed as “GALAT KAAM” as ‘Rape’. But, from the evidence, it is quite clear that she was a consenting party to the physical relationship. The fact that there was some assurance of marriage also, not be ruled out as the victim girl and the other witnesses have also stated that there was some meeting so that the marriage can be contracted but the same failed. The long standing relationship and the frequent establishment of sexual relationship coupled with the fact that several opportunities were given to the victim and the victim was major and fit of mind at the time of incident, it lead to the conclusion that the sexual relationship between the parties was consensual.

14. So far as pregnancy is concerned, there is nothing on record which suggests that the victim ever conceived and/or the pregnancy was ever terminated. Thus, the statement of the victim girl to that effect is nothing but an exaggeration.

15. So far as Section 417 of the Indian Penal Code is concerned, which relates to cheating, we find that there is consistent evidence that the appellant had a wish to marry the victim girl but it was the family members, who were not aggregable to the same and they opposed the marriage. The victim even stated in her evidence that once this appellant had tried to convince her to elope and solemnize Court marriage as his family members were not ready for their marriage. The witnesses have also deposed that during the meeting also, it was the family members of the appellant who opposed the marriage. Thus, in view of aforesaid, the offence under Section 417 of the Indian Penal Code also cannot be

attracted in this case so far as the appellant is concerned.

16. After going through the evidence and perusal of the records, we are of the considered opinion that the girl was major and the sexual relationship established between the parties was consensual and as such conviction for the offence under Section 376(2) of the Indian Penal Code cannot be attracted in this case. Further, as has been held hereinabove, the offence under Section 417 of the Indian Penal Code also cannot be attracted in this case. Thus, we find that the trial court has wrongly convicted the appellant for the same and the same are fit to be quashed and set aside.

17. In that view, the Judgment of conviction and order of sentence dated 07.12.2016 passed by the learned Additional Sessions Judge – II, F.T.C. – II, Bokaro in Sessions Trial No. 64 of 2016, is hereby quashed and set aside. Since the appellant has already been released from the custody, no other order need be passed.

18. Accordingly, this Criminal Appeal is **allowed.**

19. Let the Trial Court Records be sent back to the Court concerned forthwith, along with a copy of this judgment.

20. Pending Interlocutory application, if any, is also disposed of.

(**ANANDA SEN, J.)**

(PRADEEP KUMAR SRIVASTAVA, J.)

Jharkhand High Court, Ranchi.
Dated: the 30th September, 2026.
NAFR/RC/Cp.-3.

Uploaded on: 07.10.2026